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APR 28 1998

**Director's Office
Group 2700**

In re Application of)
Reinhart K. Pildner et al.)
Application No. 08/789,386)
Filed: January 28, 1997)
For: SIZE DISCRIMINATING DUAL)
ELEMENT PIR DETECTOR)

DECISION ON PETITION

This is a decision on the petition, filed February 5, 1998, to withdraw the holding of abandonment of the above-identified application.

This application was held abandoned for failure to respond in a timely manner to the non-final Office action of June 2, 1997. A Notice of Abandonment was mailed on January 1, 1998.

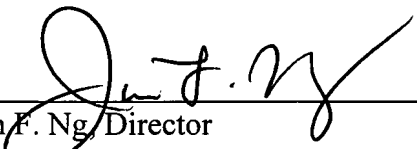
Petitioner asserts that the delay was caused by nonreceipt of the Office action dated June 2, 1997. A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

The evidence submitted with the petition satisfies the above-stated conditions for showing non-receipt of an Office action. The application was not abandoned in fact.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being forwarded to the Technology Center 2700 support staff for remailing of the Office action of June 2, 1997. The statutory period for response set therein will be reset to expire 3 (three) months from the date the action is remailed. Extensions of time are governed by 37 C.F.R. § 1.136(a).



Jin F. Ng, Director
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Telecommunications & Information Processing